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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,413	09/10/2003	Peter Kite	0078140-000036	4621

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EXAMINER	
KANTAMNENI, SHOBHA	
ART UNIT	PAPER NUMBER
1627	

NOTIFICATION DATE	DELIVERY MODE
09/09/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com
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Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/659,413	**Applicant(s)** KITE ET AL.	
	Examiner Shobha Kantamneni	**Art Unit** 1627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *NONE*.
   Claim(s) objected to: _____.
   Claim(s) rejected: *34,39,45-47,56,58,62*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see page 2.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/SREENI PADMANABHAN/
Supervisory Patent Examiner, Art Unit 1627

Continuation of 11: Applicant's arguments have been considered, but not found persuasive as discussed in the final office action, and those found below. All the rejections of record are MAINTAINED.

The rejection of Claims 34, 39, 45, 56, 58, 62 under 35 U.S.C. 103(a) as being unpatentable over Fahim (WO 00/13656), in view of Wilder (US 6,500,861, PTO-892) is MAINTAINED.

Applicant argues that "Even if the handwash of Fahim is biocompatible with the epidermis and eye, this does not mean that Fahim is biocompatible for use in in- dwelling access catheters, urinary catheters, nasal tubes and throat tubes." These arguments have been considered, but not found persuasive. It is pointed out that applicant defines bicompatibility as "the condition of being compatible with living tissue or living system by not being toxic or injurous". Fahim teaches that the skin care treatments compositions therein are safe and not toxic and biocompatable. Thus, the compositions of Fahim are biocompatible, and meet the definition of biocompatible according to applicant, since the compositions of Fahim are not toxic and did not have any adverse pharmacological effects when living tissue such as skin was exposed to the composition.

Applicant's arguments that "With an awareness of this key distinction between the effect of external (skin and eye)contact of a toxin compared to internal contact of a toxin, Dr. Olmstead and Mr. Ketteridge declared that "Fahim teaches compositions comprised of potentially toxic chemicals unsuitable for oral ingestion or parenteral administration." These remarks have been considered but not found persuasive, as discussed above the compositions of Fahim are biocompatible and meet the definition of biocompatibility.

Applicant's remarks that "Moreover, regarding the individual components of the Fahim handwash -- triclosan, PCMX, and glutaraldehyde -- the Office must recognize that each is not biocompatible when given direct access into the body, when internally entering a user orally and/or parenterally to directly come into contact with the bloodstream and internal tissues." These arguments have been considered, but not found persuasive because administering a compound orally and/or parenterally is not the same as biocompatability for use in in-dwelling catheters. Toxicity of any compound depends on the amount of the compound. The amount of compounds exposed internally when used in in-dwelling catheters is very small/minor amount, and will not have any toxicity effects. Further, contrary to applicant's remarks regarding for example triclosan, it is pointed out that triclosan is a well known antimicrobial agent used in variety of products including for example toothpaste.

The rejection of Claim 46 under 35 U.S.C. 103(a) as being unpatentable over Fahim (WO 00/13656, PTO-892), in view of Wilder (US 6,500,861, PTO-892), as applied to 32, 34, 39, 41, 42, 45, and 56-60 above, and further in view Remington's Pharmaceutical Sciences is MAINTAINED.

The rejection of Claim 47 under 35 U.S.C. 103(a) as being unpatentable over Fahim (WO 00/13656), in view of Wider (US 6,500,861 B1), as applied to Claims 32, 34, 39, 41, 42, 45, and 56-60 above, and further in view of Root et al. (Antimicrobial Agents and Chemotherapy. Nov. 1988, pages 1627-1631, PTO-892) is MAINTAINED.

The rejection of Claim 62 under 35 U.S.C. 103(a) as being unpatentable over Root et al. (Antimicrobial Agents and Chemotherapy. Nov. 1988, pages 1627-1631, PTO-892), in view of Raad et al. (US 6,267,979, PTO1449), and further in view of Wilder (US 6,500,861, PTO-892) is MAINTAINED. Note that applicant did not comment on the rejection.